

international law, the same is true for natural persons. And while international *criminal* tribunals have, thus far, been limited to the prosecution of natural persons, that appears to be because of matters unique to criminal punishment. Notably, several countries that have incorporated international criminal offenses into their domestic law apply those offenses to corporations.⁹

Shortly after the late February 2012 oral argument in the case, the Supreme Court ordered further proceedings to consider whether the ATS applies to conduct occurring within a foreign territory. The text of the Court order follows:

This case is restored to the calendar for reargument. The parties [are] directed to file supplemental briefs addressing the following question: “Whether and under what circumstances the Alien Tort Statute, 28 U.S.C. §1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.” The supplemental brief of petitioners is due on or before Thursday, May 3, 2012. The supplemental brief of respondents is due on or before Monday, June 4, 2012. The reply brief is due on or before Friday, June 29, 2012. The time to file *amicus curiae* briefs is as provided for by Rule 37.3(a). The word limits and cover colors for the briefs should correspond to the provisions of Rule 33.1(g) pertaining to briefs on the merits rather than to the provision pertaining to supplemental briefs.¹⁰

INTERNATIONAL CRIMINAL LAW

U.S. Official Describes U.S. Policy Toward International Criminal Court

In a statement to the Assembly of States Parties to the Statute of the International Criminal Court (ICC) in mid-December 2011, Ambassador-at-Large for War Crimes Issues Stephen J. Rapp described U.S. views on international criminal justice and the ICC. A substantial excerpt follows:

[A]lthough the United States is not a party to the Rome Statute, we are continuing to engage with the ICC and States Parties to the Rome Statute to end impunity for the worst crimes. Over the past several years, we have sent active observer delegations to the [Assembly of States Parties] sessions and the Review Conference in Kampala. We have actively engaged with the [Office of the Prosecutor] and the Registrar to consider specific ways that we can support specific prosecutions already underway, and we have responded positively to a number of informal requests for assistance. We supported the UN Security Council’s ICC referral regarding Libya and are working hard to ensure that those charged by the Court there face justice consistent with international standards. From the [Democratic Republic of the Congo] to Cote d’Ivoire, Darfur to Libya, we have worked to strengthen accountability for atrocities because we know, as President Obama has said, that “justice is a critical ingredient for lasting peace.”

What are the concrete steps we can take to continue to advance this common cause?

First, at both the international and national levels, we should continue to recognize and promote the important role that justice and reconciliation play in resolving conflicts. . . . [S]ince we last met in New York one year ago, the Security Council made history with its

⁹ *Id.* at 5–8.

¹⁰ *Kiobel*, 182 L.Ed.2d 270, 270–71 (Mar. 5, 2012); see also <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1491.htm>.

first unanimous referral to the ICC of the situation in Libya. Resolution 1970, adopted even as atrocities were being perpetrated, represented an historic milestone in the fight against impunity.¹

....

Second, States must elevate as a priority the prevention of and response to mass atrocities, and work to marshal and coordinate their own capacities. Since we last addressed this Assembly, in August 2011, President Obama issued a presidential directive in which he identified the prevention of mass atrocities and genocide as a core national security interest, as well as a moral responsibility, of the United States. Accordingly, he directed the creation of an Atrocities Prevention Board to coordinate a whole-of-government approach to preventing and responding to genocide and mass atrocities. . . .²

On the same day President Obama announced this new effort, he also issued a Presidential Proclamation restricting entry into the United States of persons who participate in serious human rights and humanitarian law violations. Ensuring there is no safe haven for perpetrators of mass atrocities is key to establishing a mutually reinforcing world-wide network to combat impunity for the most serious crimes.

....

There are many ways States can lend tangible support to the protection of witnesses and judicial officers. Witness protection programs need funding from partner States, expert collaboration from domestic officials and practitioners, training, and resources. For example, this year we renewed our funding for a witness protection project implemented by the Joint Human Rights Office of MONUSCO, the UN Organization Stabilization Mission in the Democratic Republic of the Congo. We have supported similar efforts in other situation countries. This is a good start, but these ad hoc efforts need to be institutionalized and expanded to fill the wide gap. States can also fulfill the important function of accepting witnesses for resettlement where their participation in trials is vital, but their living conditions at home are too dangerous to tolerate. . . .

Madame President, it is a persistent and serious cause for concern that eight individuals who are the subject of existing ICC arrest warrants remain at large. The recent transfer of former President Laurent Gbagbo to The Hague to face charges of crimes against humanity is an important step forward. But the landscape remains challenging. Years after their warrants were issued, the suspects who currently remain at large all too often remain free to continue to commit serious human rights violations, which contributes to the cycle of impunity and persistent instability. The international community must demonstrate its respect for accountability, and should bring diplomatic pressure to bear on States that would invite or host these individuals.

....

States can also lend expertise and logistical support to efforts to apprehend these fugitives. . . . I am pleased to be able to report that, with the consent of governments in the region, the United States recently sent a small number of U.S. military advisors to the region to assist the forces that are pursuing the [Lord's Resistance Army] and seeking to bring its top commanders to justice. . . .³

¹ [Editor's note: see John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 568, 569 (2011).]

² [Editor's note: see John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 775, 805 (2011).]

³ [Editor's note: see John R. Crook, *Contemporary Practice of the United States*, 106 AJIL 138, 168 (2012).]

These efforts are part of a larger U.S. government commitment to support international criminal justice in its many forms. We support the continuing important work of the ad hoc tribunals, and look forward to the creation of the Residual Mechanism. We look forward to the successful completion of the important Karadzic, Mladic, and Hadzic cases, which will bring an important element of closure to the tragedy that consumed the Balkans in the 1990s. . . .⁴

U.S. Agreements and Actions to Combat Smuggling of Cultural Property

The United States has concluded agreements with at least fourteen foreign countries in the framework of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.¹ These agreements are intended to combat smuggling of archeological and ethnological materials illegally removed from their countries of origin.² A U.S. Department of State website explains:

The United States is one of over 115 states party to the *1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* ("the Convention"). The Department of State is responsible for administering the Convention by means of the enabling legislation entitled *The Convention on Cultural Property Implementation Act* ("the Act"). The Act allows the U.S. to consider requests from any state party to the Convention to impose import restrictions on archaeological or ethnological material when pillage of these materials places a nation's cultural heritage in jeopardy. (See the Act as Public Law 97-446; or as 19 U.S.C. 2601 et seq.)

Pursuant to the statutory process detailed in the Act, the Department receives foreign government requests for import restrictions. These are reviewed by the Cultural Property Advisory Committee, which makes recommendations to the Department. The Department may decide to enter into an agreement with a requesting country that not only imposes import restrictions, but also promotes international collaboration in developing sustainable safeguards for cultural heritage, and increased international access to it for cultural, educational, and scientific purposes.³

In December 2011, the Department of State announced the renewal of the U.S. agreement with Bolivia for an additional five-year term⁴ and the entry into force of an agreement with Greece. The Department's announcement of the agreement with Greece follows:

With an exchange of diplomatic notes on November 21, 2011, the agreement to protect Greece's cultural heritage, which Secretary of State Hillary Rodham Clinton and then Minister of Foreign Affairs Stavros Lambrinidis signed on July 17, 2011, entered into force.

⁴ U.S. Dep't of State Press Release, U.S. Statement to the Assembly of States Parties of the International Criminal Court (Dec. 14, 2011), at http://www.state.gov/j/gcj/us_releases/remarks/179208.htm.

¹ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 UNTS 231, 10 ILM 289 (1971), available at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

² See John R. Crook, Contemporary Practice of the United States, 100 AJIL 455, 460 (2006).

³ U.S. Dep't of State, International Cultural Property Protection, at <http://exchanges.state.gov/heritage/culprop.html>.

⁴ U.S. Dep't of State Press Release No. 2011/2115, Extension of Bilateral Agreement to Continue Import Restrictions on Archaeological and Ethnological Material (Dec. 12, 2011), at <http://www.state.gov/t/pa/prs/ps/2011/12/178618.htm>.